International Association Of Bridge, Structural & Ornamental Ironworkers Local No. 15 *and* **Spancrete Northeast, Inc. and Construction & General Laborers Local Unions 190 and 230.** Case 39-CD-20

31 July 1984

DECISION AND DETERMINATION OF DISPUTE

BY CHAIRMAN DOTSON AND MEMBERS ZIMMERMAN AND HUNTER

The charge in this Section 10(k) proceeding was filed 18 January 1984 by Spancrete Northeast, Inc. (Spancrete), alleging that the Respondent, International Association of Bridge, Structural & Ornamental Ironworkers, Local No. 15 (Ironworkers), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing Spancrete to assign certain work to employees Ironworkers represents rather than to employees represented by Construction & General Laborers Local Unions 190 and 230 (Laborers). The hearing was held 7 February 1984 before Hearing Officer Charles F. McElroy.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

Spancrete, a New York corporation, is engaged in the manufacture, sale, and installation of precast, prestressed concrete products. During the 12 months preceding February 1984, Spancrete received goods and materials valued in excess of $50,000 from suppliers, and provided goods and services valued in excess of $50,000 to customers located outside the State of New York. Associated Construction Company (Associated), a Connecticut corporation, is engaged in general contracting for construction of commercial and industrial buildings. During the same 12-month period, Associated had gross receipts over $50,000 and purchased materials valued in excess of $50,000 directly from outside the State of Connecticut. The parties stipulate and we find that Spancrete and Associated are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Ironworkers and Laborers are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

Associated is the general contractor on a construction project at the Hartford Criminal Court Facility, 101 Lafayette Street, Hartford, Connecticut. Spancrete, a subcontractor, contracted to supply and install precast, prestressed concrete members on the project. The concrete members consist of prefabricated building parts, such as columns, beams, and planks, that are put together to form the structure. Spancrete assigned the work of receiving, unloading, and erecting these materials on the project to its employees represented by Laborers. Specifically, Spancrete assigned the work to a key crew of permanent employees from its South Bethlehem (Albany), New York plant represented by Laborers Local 190, and to local Hartford area employees represented by Laborers Local 230. About 17 January 1984, the first day Spancrete's employees represented by Laborers began performing that work, Ironworkers threatened and called a work stoppage on the project to protest the assignment of the work to employees represented by Laborers rather than to employees represented by Ironworkers. Approximately 18 ironworkers, employed by 3 different subcontractors on the project, walked off the job and stayed off until the laborers had completed the first stage of the work and left the project the following night. On 18 January 1984 Spancrete filed the 8(b)(4)(D) charge in this case against Ironworkers. The major part of Spancrete's work on the project is to be performed in the latter part of the summer of 1984.

On Spancrete's first day on the project, when Ironworkers called its work stoppage, there were five people working for Spancrete on the job: a key crew, consisting of a supervisor and two plant employees, represented by Laborers Local 190 and two locally hired employees represented by Laborers Local 230. They were assisted by a crane operator represented by Operating Engineers.

B. *Work in Dispute*

The work in dispute is the receiving, unloading, and erection of precast, prestressed concrete members at the Hartford Criminal Court Facility, Hartford, Connecticut.

C. *Contentions of the Parties*

Spancrete and Laborers take essentially the same position with regard to the work assignment. They contend that the traditional factors of collective-bargaining agreements, employer preference, and economy and efficiency of operation, as well as prior Board decisions, support the assignment of

the work in dispute to employees represented by Laborers. They concede that general area practice is mixed, but point out that Spancrete's customary practice in Connecticut, as elsewhere, has been to assign work of this type to employees represented by Laborers locals. Laborers requests a broad work award coextensive with the areas covered by the agreement between Spancrete and the Connecticut Laborers District Council (which covers Laborers Local 230 and its sister locals in Connecticut) and the agreement between Spancrete and Laborers Local 190 (which covers employees from Spancrete's South Bethlehem (Albany), New York plant). Spancrete has not joined in the request for a broad work award.

In support of its claim to the disputed work, Ironworkers relies on its contract with a multiemployer bargaining association to which Associated, the general contractor, belongs; a work award of the Board favoring employees represented by an Ironworkers local in a jurisdictional dispute in New York City involving Spancrete; decisions of the Impartial Jurisdictional Disputes Board; area practice; and the allegedly greater skills, training, and experience of ironworkers.

D. *Applicability of the Statute*

The record shows, and Ironworkers does not dispute, that Ironworkers threatened and caused a work stoppage of employees of three subcontractors on the project to compel the assignment of the disputed work to employees represented by Ironworkers rather than to employees represented by Laborers. We find reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred. No party to the dispute submitted evidence that they had adjusted, or agreed on methods for the voluntary adjustment of, the dispute. Accordingly, we find that the dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination in a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certification and collective-bargaining agreements

Spancrete is a party to the National Construction Agreement with Laborers International. That agreement provides that it shall cover "all field construction," as well as "all work performed by the Employer" and "all work coming within the trade jurisdiction" of the Laborers as set out in the constitution of the Laborers International. The constitution incorporates the Laborers International manual of jurisdiction, which provides that the following work is within the Laborers jurisdiction:

> Where prestressed or precast concrete slabs, walls or sections are used, all loading, unloading, stockpiling, hooking on, signaling, unhooking, setting and barring into place of such slabs, walls or sections. All mixing, handling, conveying, placing and spreading of grout for any purpose.

Spancrete also has collective-bargaining agreements with Laborers locals at its manufacturing plants. As noted, the permanent employees assigned to the disputed work here are from Spancrete's South Bethlehem (Albany), New York plant represented by Laborers Local 190. The collective-bargaining agreement between Spancrete and Laborers Local 190 in force at the time of the hearing provided that all products manufactured and installed by Spancrete should be installed by members of Laborers.[1] Local 190 was certified to represent Spancrete's employees at its South Bethlehem (Albany), New York plant. But that certification makes no specific reference to the crews that Spancrete uses to perform construction site work like that involved here.

Ironworkers has no collective-bargaining agreement with Spancrete and has not been certified to represent its employees. Although Ironworkers has a collective-bargaining agreement with the Associated General Contractors of Connecticut applicable to the general contractor on the project here involved, that agreement does not bind Laborers or Spancrete. Accordingly, we find that the contracts favor awarding the disputed work to employees of Spancrete who are represented by Laborers.

2. Company preference and past practice

Spancrete's preference and customary practice is to assign the work of receiving, unloading, and erecting its concrete products to its employees rep-

[1] Although the written agreement between Spancrete and Laborers Local 190 had expired at the time of the hearing, the parties had agreed to continue to be bound by its terms. A new agreement had been negotiated and the parties were waiting for the new written agreement.

resented by Laborers locals. Typically, Spancrete dispatches a crew of permanent employees from one of its manufacturing plants and supplements that crew with employees hired locally for the particular job. The permanent employees are represented by the Laborers local at the plant from which the employees are dispatched and the locally hired employees are represented by the Laborers local with jurisdiction over the geographic area in which the job is located. As noted, in the present case the permanent employees were from Spancrete's South Bethlehem (Albany), New York plant and were represented by Laborers Local 190 based in Albany, New York, while the locally hired employees were represented by Laborers Local 230 based in Hartford, Connecticut. Spancrete's practice is consistent with its collective-bargaining agreements[2] and is reflected in earlier Board jurisdictional dispute determinations involving Spancrete.[3] In such disputes we have repeatedly awarded work of the type here involved to employees represented by Laborers locals. See cases cited below at footnote 3. The sole exception is in New York City where Laborers locals have refused to supply Spancrete with workers, in apparent deference to a longstanding Building Trades Employers' Association award in favor of ironworkers. Spancrete has therefore been unable to complete a job in New York City with laborers. In light of the special considerations applicable to New York City, the work of erecting and installing concrete on a project within the city was awarded to ironworkers. *Iron Workers Local 40 (Spancrete Northeast)*, 197 NLRB 822, 824–825 (1972). Spancrete's erection superintendent for all outside construction, Ivan Millett, testified in the present case that Spancrete no longer performs any work within New York City. In view of the special facts presented there, we find that the New York City exception does not detract significantly from Spancrete's otherwise consistent practice and that Spancrete's past practice and preference favor awarding the work here in dispute to employees represented by Laborers.

3. Area and industry practice

The record fails to establish a uniform area or industry practice covering the erection of precast, prestressed concrete. As noted, Spancrete's customary practice is to assign the receiving, unloading, and erecting of its precast, prestressed concrete products to its employees represented by Laborers locals. Thus, Spancrete erects 90 to 95 precent of its product with its own employees. In Connecticut, from 1974 through 1983, Spancrete erected over 780,000 square feet of concrete products on 24 projects with its employees represented by Laborers locals.

Ironworkers business representative Michael Blackburn testified that ironworkers have worked with prestressed, precast concrete on numerous projects in Connecticut. He listed over 150 such projects from 1961 to 1982 and testified to the general widespread use of ironworkers for this type of work. Thus, there is area and industry practice to support Ironworkers' claim. Nonetheless, the record shows that Spancrete's customary practice of using laborers for this type of work has been followed in Connecticut and the amount of work there performed by laborers for Spancrete is significant.[4] Accordingly, we find that industry and area practice does not clearly favor either group of employees.

4. Relative skills

Spancrete Superintendent Millett testified that Spancrete employs experienced people who have been with the Company for many years and know how to hook up its products so that they are structurally correct and safely and economically integrated into the structure. He further testified that newly hired permanent employees receive extensive training, learning to handle Spancrete's products safely and soundly, and that permanent employees also receive specific instruction in the spe-

[2] Relevant contractual provisions include, in addition to those discussed above, a provision of the national agreement between Spancrete and Laborers International authorizing Spancrete to employ both locally hired laborers and a limited number of regular "key men," who, "because of their special knowledge, skill, and experience regarding the Employer's operations are considered necessary by the Employer to the efficient performance of the work to be done under the Agreement." The wage rate, working conditions, and fringe benefits for the construction work are set by the Laborers local collective-bargaining agreement in the area where the job is located. In this case, the applicable agreement is between the Labor Relations Division of the Associated General Contractors of Connecticut, Inc., and the Connecticut Laborers District Council, which covers Hartford Laborers Local 230 and 10 sister locals in Connecticut. Spancrete's collective-bargaining agreement with Laborers Local 190 at its South Bethlehem (Albany), New York plant provides that the work of installing products manufactured by Spancrete shall be paid at the prevailing outside rates.

[3] See *Bricklayers Local 10*, 191 NLRB 638, 639 (1971); *Bricklayers Local 42*, 192 NLRB 64, 65, 66 (1971); *Iron Workers Local 6*, 196 NLRB 1182, 1184 (1972); *Iron Workers Local 417*, 219 NLRB 986, 988 (1975); *Iron Workers Local 301*, 235 NLRB 1222, 1224 (1978); *Iron Workers Local 3*, 243 NLRB 467, 469 (1979); *Iron Workers Local 40*, 244 NLRB 182, 184 (1979); *Iron Workers Local 3*, 267 NLRB 950, 952 (1983).

[4] We find unpersuasive Ironworkers' effort to discount laborers' work in Connecticut with precast, prestressed concrete on the ground that much of it involves concrete planks, while much of the work on the instant project involves concrete members other than planks. Ironworkers has not shown why laborers' work with concrete planks should be discounted in judging area practice with respect to this type of work and, indeed, much of its own evidence concerning area practice does not differentiate between ironworkers' work with concrete planks and their work with other concrete products.

cial tools and equipment used to erect Spancrete's products.

Ironworkers business representative Blackburn testified that Ironworkers has a certified apprenticeship program in the State of Connecticut, which provides training in the unloading and erecting of precast, prestressed concrete. Blackburn further testified that, on completion of the apprenticeship program, ironworkers have to pass a test administered by the State. He expressed the view that ironworkers are generally more skilled and specialized employees than laborers and that their safety record is unsurpassed.

From all the evidence, it appears that both laborers and ironworkers possess the required skills to perform the work here in dispute. Accordingly, we find that the factor of skill does not clearly favor either group.

5. Economy and efficiency of operation

Spancrete contends that it benefits from the experience and training its permanent employees receive in handling its products and in using the special equipment and tools required. In addition, Spancrete argues that the versatility of laborers eliminates some of the work problems created by having a composite crew of several trades, whose members can perform one function but not another. On the other hand, Ironworkers contends that its members can perform all the functions on the job that Laborers members can[5] and that it can perform the work better, faster, and with fewer employees. In view of the contradictory evidence, we find that the factors of economy and efficiency do not clearly favor either group of employees.

6. Prior jurisidictional dispute determinations

Ironworkers relies on determinations of the Impartial Jurisdictional Disputes Board awarding work of the type here involved to employees represented by Ironworkers. But Spancrete had never agreed to be bound by determinations of the Impartial Jurisdictional Disputes Board. Moreover, each award of that board cited by Ironworkers specifically states, "[T]his action of the Board was predicated upon particular evidence before it regarding this dispute and shall be effective on this particular job only."

Our jurisdictional dispute determinations have repeatedly awarded the type of work here involved to employees of Spancrete represented by Laborers. See cases cited supra at footnote 3. As noted, the single exception, in New York City, turned on facts so clearly distinguishable as to make that decision inapplicable here. *Iron Workers Local 40*, 197 NLRB at 824–825. We therefore find unpersuasive Ironworkers reliance on that decision, as well as its reliance on nonprecedential decisions of the Impartial Jurisdictional Disputes Board that are not binding on Spancrete.

[5] Neither laborers nor ironworkers operate the crane, which is normally handled by an operating engineer.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Laborers Locals 190 and 230 are entitled to perform the work in dispute. We reach this conclusion relying on Spancrete's collective-bargaining agreements, Spancrete's long-established practice of assigning work of the type here involved to employees represented by Laborers locals, and Spancrete's preference. In making this determination, we are awarding the work to employees represented by Laborers Locals 190 and 230, not to those Unions or their members.

Scope of the Award

As noted, Laborers requests a broad work award coextensive with the areas covered by Spancrete's collective-bargaining agreements with Connecticut Laborers District Council and with Laborers Local 190. Spancrete has not joined in the request for a broad work award. As Laborers notes, Spancrete has been the target of similar jurisdictional disputes. We have resolved eight such disputes involving Ironworkers locals in favor of Spancrete's employees represented by other unions. See cases cited supra at footnote 3. But we have repeatedly rejected requests for a broad work award on the ground that the particular Ironworkers local involved had no history of nonmeritorious jurisdictional claims. We found that the nonmeritorious claims of other Ironworkers locals in other localities did not demonstrate a proclivity on the part of Ironworkers locals who had never before made a nonmeritorious jurisdictional claim to engage in unlawful conduct. *Iron Workers Local 6*, 196 NLRB 1182, 1185; *Iron Workers Local 417*, 219 NLRB at 989–990; *Iron Workers Local 301*, 235 NLRB at 1225–26; *Iron Workers Local 3*, 243 NLRB at 470–471; *Iron Workers Local 40*, 244 NLRB at 186.[6]

[6] In *Iron Workers Local 3*, 267 NLRB 950 at 952–953, the Board declined to issue a broad work award even though the Ironworkers local involved had been the respondent in a similar dispute 4 years before, concluding that this one instance of earlier unlawful conduct was not "sufficient to establish the kind of proclivity to engage in further unlawful conduct which might justify the broad order sought." Chairman Dotson, dissenting, would have granted a broad work award in that case coextensive with the territorial jurisdiction of Ironworkers Local 3. Id. at 14 fn. 8. Member Hunter did not participate in the decision in *Iron Workers Local 3*.

In the present case, where there is no showing of a prior nonmeritorious jurisdictional claim by the Respondent and where the Charging Party has not joined in the request for a broad award, we find that such an award is unwarranted. Therefore, the present determination is limited to the particular controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Spancrete Northeast, Inc. who are currently represented by Construction & General Laborers Local Unions 190 and 230 are entitled to perform the work of receiving, unloading, and erecting precast, prestressed concrete members at the Hartford Criminal Court Facility, Hartford, Connecticut.

2. International Association of Bridge, Structural & Ornamental Ironworkers, Local No. 15 is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to force Spancrete Northeast, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, International Association of Bridge, Structural & Ornamental Ironworkers, Local No. 15 shall notify the Regional Director for Region 39 in writing whether it will refrain from forcing Spancrete Northeast, Inc., by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.